

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

GREENBERG SMOKED TURKEYS, INC.

Plaintiff,

v.

VALUECLICK, INC.,

Defendant.

Civil Action No. 6:11-cv-00038

CONSENT DECREE AND FINAL JUDGMENT

On this day the parties, appearing through their respective counsel, announced to the Court that the matters in controversy between them have been settled and jointly seek the entry of this Consent Decree and Final Judgment in accordance with the settlement agreement. The Court, with the parties consent, finds that judgment should be entered as follows:

WHEREAS, GREENBERG SMOKED TURKEYS, INC. (“Greenberg”) has brought a civil lawsuit against VALUE CLICK, INC. (together with ValueClick Brands, Inc, “ValueClick”) seeking a permanent injunction, damages and other relief alleging trademark infringement and unfair competition under federal statutory and state common law, and trademark dilution under federal and state statutory law, which currently is pending in the United State District Court, Eastern District of Texas, Tyler Division, Case No. 6:11-cv-00038 (the “Action”);

WHEREAS, Greenberg has consistently and continuously used the marks “GREENBERG” and “GREENBERG SMOKED TURKEY” since the late 1930’s in the

marketplace in conjunction with its turkey products to identify those products and to distinguish them from those offered by others;

WHEREAS, Greenberg obtained a trademark registration for the mark “GREENBERG” on June 23, 1987 (U.S. Registration No. 1,444,298) and that registration is incontestable under 15 U.S.C. §1065;

WHEREAS, Greenberg obtained a trademark registration for the mark “GREENBERG SMOKED TURKEY” on September 3, 2002 (U.S. Registration No. 2,614,281) and that registration is incontestable under 15 U.S.C. §1065;

AND, WHEREAS, Greenberg has alleged that ValueClick has without authorization used the marks “GREENBERG” and “GREENBERG SMOKED TURKEYS” in conjunction with the advertising and marketing of various products including a) the purchase of such trademarks from Internet search engines as keywords, so that ValueClick’s advertisements will be seen by Internet users who enter such trademarks as search terms into those search engines, and b) the placement of such trademarks in the ValueClick advertisements that appear when Internet users enter such trademarks as search terms into those search engines.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED with the parties’ consent that:

1. This Court has jurisdiction of the subject matter of this action and of the parties.

2. ValueClick Brands, Inc. shall, with all applicable search engines implement a “negative match” for the following terms:

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3. In addition, ValueClick, its agents, servants, employees, representatives, successors and assigns, and all other persons, firms, or corporations acting on behalf of ValueClick, as well as those who, provided they are served with or are given actual notice of this Consent Decree, acting in concert, privity, or participation with ValueClick, are immediately and permanently enjoined from:

- (a) Using in commerce the terms “GREENBERG” and “GREENBERG SMOKED TURKEYS” or any of those full terms in the list set forth in paragraph 2 above (and “use in commerce” shall include without limitation the use of such terms in keyword advertising, metatags, or invisible text on ValueClick Brands, Inc.’s websites);
- (b) Using in any manner or in connection with any of ValueClick Brand Inc.’s advertising or promotion the terms “GREENBERG” and “GREENBERG SMOKED TURKEYS” or any of those full terms in the list set forth in paragraph 2 above;
- (c) Doing, authorizing or permitting others to do any act calculated or likely to cause confusion or mistake in the mind of the public or to lead consumers into the belief that services or products offered, sold, distributed, advertised or transmitted by ValueClick Brands, Inc. are authorized, sponsored, licensed, endorsed, promoted or condoned by plaintiff or otherwise affiliated with or connected to Greenberg.

4. Other than as set forth in the Settlement Agreement, each party shall bear its own costs.
5. This Court shall retain jurisdiction of this matter as to enforcement of the Consent Decree and for punishment of any violation thereof. If ValueClick Brands, Inc. is found to be in violation of this Consent Decree, in addition to any damages or other relief or penalty that maybe imposed by the Court, ValueClick shall pay all of Greenberg's reasonable attorneys' fees and reasonable costs incurred in connection with enforcing the Consent Decree.

So ORDERED and SIGNED this 17th day of May, 2011.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**